

2/28
15

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2005, by, between and among the following parties:

- The Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (the "Town"), acting by and through the Acton Board of Selectmen for itself and as the Sewer Commissioners of the Town (the "Board");
- 68 River Street, LLC, a Massachusetts limited liability corporation with a principal place of business at 114 Newtown Road, Acton, MA 01720, by its members Paul Gaboury and Glen Kaufmann, on behalf of itself and its successors and assigns (the "River Street LLC");
- 111-113 School Street, LLC, a Massachusetts limited liability corporation with a principal place of business at 114 Newtown Road, Acton, MA 01720, by its members Glen Kaufmann and Donna Kaufmann, on behalf of itself and its successors and assigns (the "School Street LLC"); and
- Acton Community Housing Corporation, a municipal community housing corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 ("ACHC").

WHEREAS the River Street LLC proposes to build low or moderate income housing in a development of 8-unit condominium development (the "Project") located at 111-113 School Street in Acton and identified as Lot 37 on Assessor's Map H3A (the "Project Site").

WHEREAS the Project Site is currently owned by the School Street, LLC (the "Owner") and is to be transferred to the River Street LLC upon approval of the comprehensive permit for the Project.

WHEREAS the Town has recently completed construction of the Fort Pond Brook Sewage Treatment Plant and its associated public sewer lines and facilities (the "Town Sewer").

WHEREAS the River Street LLC proposes to connect the Project to the Town Sewer.

WHEREAS the Town and the Board have respectively adopted a sewer Bylaw and Sewer Use Regulations applicable to sewer connections and sewer use in the Town of Acton, copies of which are attached as Exhibits A (the "Bylaw") and B (the "Regulations").

WHEREAS the Board is authorized by Section D.10.2 of the Bylaw to assess sewer betterments in accordance with the Uniform Unit Method.

WHEREAS the Board is authorized by Section D,10.5 of the Bylaw to "establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land not previously served by the sewer system and not previously assessed to the owner of such land."

WHEREAS the Board has adopted a Sewer Privilege Fee Schedule, a true copy of which is attached as Exhibit C (the "Sewer Privilege Fee Schedule").

WHEREAS the Board is in the process of assessing final sewer betterments pursuant to the Bylaw and the Regulations for land benefited by the Town Sewer.

WHEREAS, final approval of the Project may occur before or after final sewer betterments are issued.

WHEREAS as part of its approval process before the Department of Housing and Community Development ("DHCD"), the River Street LLC seeks a commitment from the Board that the River Street LLC will be allowed to connect the Project to the Town Sewer.

WHEREAS the Board is willing to provide that commitment in return for the commitments by River Street LLC and School Street LLC as set forth herein

WHEREAS ACHC is willing to subsidize payment of a portion of the final sewer betterment assessment or sewer privilege fee applicable to the two affordable units in the Project on the terms and conditions set forth herein.

NOW THEREFORE, for one dollar and other adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Town, the Board, the River Street LLC, the Schools Street LLC, and ACHC agree as follows:

1. **Permits and Approvals**

The River Street LLC shall apply for all necessary governmental licenses, permits, approvals or other relief required for the Project and the connection of the Project to the Town Sewer ("Governmental Approvals"). The River Street LLC shall pay for all costs and expenses incurred in connection with applying for, obtaining and maintaining all necessary Government Approvals the Project and the connection of the Project to the Town Sewer.

2. **Construction of the Sewer Connection for the Project**

Upon receipt of all necessary Government Approvals the Project and the connection of the Project to the Town Sewer, the River Street LLC shall construct the Project and the connection of the Project to the Town Sewer in accordance with the Government Approvals. The River Street LLC shall pay for all costs and expenses of the construction of the Project and

the connection of the Project to the Town Sewer in accordance with the Town's specifications.

3. **Payment of Final Sewer Betterment Assessment**

Section D.10.2.b.2 of the Bylaw provides in relevant part that, "Multi-family units with three or more bedrooms shall be assessed on the basis of one sewer unit per dwelling unit. Each owner of a condominium or cooperative dwelling unit in a multi-family residential building shall be assessed only for his or her dwelling unit." The River Street LLC and the School Street LLC agree that, if the final comprehensive permit for the Project is issued before the Town issues final sewer betterment assessments for the Town Sewer, then the Project Site shall be assigned eight (8) Sewer betterment Units ("SBU") and each SBU shall be assessed the standard dollar amount per SBU established by the Board when the Town issues final sewer betterment assessments for the Town Sewer (the "per SBU charge"). The River Street LLC and the School Street LLC agree that they shall either timely pay in full, or incorporate in the Master Deed for the Project's condominium documents a binding obligation for the unit owners to timely pay its proportional share of, the final sewer betterment assessment so issued. The River Street LLC and the School Street LLC agree that they shall not seek an abatement of the final sewer betterment assessment so issued.

4. **Payment of Sewer Privilege Fee in Lieu of Betterment**

In the alternative, the River Street LLC and the School Street LLC agree that, if the final comprehensive permit for the Project is issued after the Town issues final sewer betterment assessments for the Town Sewer, then the Project Site shall be assessed a Sewer Privilege Fee in accordance with the Sewer Privilege Fee Schedule. In that assessment, the Project Site shall be assigned eight (8) Sewer betterment Units ("SBU"), which shall be multiplied by the ordinary "per SBU charge" for properties within the sewer betterment district. Added to this number shall be the usual sewer connection fee for each new connection to the sewer. The River Street LLC and the School Street LLC agree that they shall either timely pay in full, or incorporate in the Master Deed for the Project's condominium documents a binding obligation for the unit owners to timely pay its proportional share of, the Sewer Privilege Fee so assessed. The River Street LLC and the School Street LLC agree that they shall not seek an abatement of the Sewer Privilege Fee so assessed.

5. **Sewer Use Charges**

The River Street LLC and the School Street LLC agree that they shall incorporate in the Master Deed for the Project's condominium documents a binding obligation for the unit owners to timely pay any and all sewer use charges and other costs and assessments in accordance with the General Laws and the Bylaw and Regulations.

6. **Obligations Run With the Land**

The River Street LLC and the School Street LLC agree that the Town may record this Agreement in the chain of title for the Project Site and that the obligations of the River Street LLC and the School Street LLC set forth in this Agreement shall run with the land and be binding upon River Street LLC and the School Street LLC and their respective successors and assigns. In so recording, the Town need not record the Exhibits to this Agreement for said recording to be valid notice of this Agreement and its Exhibits. In the event the Registry and/or Registration office requires changes to the form of this Agreement to render it recordable, the River Street LLC and the School Street LLC shall cooperate with the Town and shall forthwith take all actions reasonably required by the Town to render this Agreement or notice hereof recordable.

7. **ACHC Subsidy**

Upon the issuance of a certificate of occupancy for each of two affordable housing units in the Project, ACHC agrees that it will pay to the Town \$7,500 toward that affordable unit's final sewer betterment assessment or Sewer Privilege Fee, as applicable. In the alternative, in the event that the River Street LLC has, prior to that time, paid in full the affordable unit's final sewer betterment assessment or Sewer Privilege Fee, as applicable, then ACHC shall (upon receipt of satisfactory proof of said payment therefor), reimburse the River Street LLC the sum of \$7,500 toward that affordable unit's final sewer betterment assessment or Sewer Privilege Fee, as applicable. In no case shall ACHC's obligation under this paragraph exceed a total of \$15,000.

8. **Miscellaneous**

Binding Effect. The terms and covenants of this Agreement shall run with the land comprising the Project Site and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. The provisions of this Agreement shall be binding upon all the parties having or acquiring any right, title or interest in any of the Project Site. Each owner of the Project Site or any portion thereof or interest therein, by accepting delivery of a deed to the Project Site, or any portion thereof or interest therein, subject to this Agreement, agrees and covenants that the terms and conditions of this Agreement are reasonable and agrees to be bound thereby.

Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

Authorization. This Agreement has been duly authorized by all necessary actions of the River Street LLC and the School Street LLC and the signators below are duly authorized to execute this Agreement on behalf of the River Street LLC and the School Street LLC, respectively.

WHEREFORE the parties have set their hands and seal to this Agreement on this _____ day of _____, 2005.

**Town of Acton,
By its Board of Selectmen,**

F. Dore' Hunter, Chairman

Peter K. Ashton

William H. Shupert, III

Walter M. Foster

Robert A. Johnson

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton, proved to me through satisfactory evidence of identification, which was: examination of _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, a municipal corporation.

(official signature and seal of notary)

68 River Street, LLC

Paul Gaboury, manager

ITC MANAGER
GLEN KAUFMANN

LLC ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 18 day of Feb, 2005, before me, the undersigned Notary Public, personally appeared Paul Gaboury and Glen Kaufmann, proved to me through satisfactory evidence of identification, which were known to me to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as a Member of 68 River Street, LLC

Chris M. J. [Signature] (official signature and seal of notary)

My commission expires Sept 26, 2008

111-113 School Street, LLC

Glen Kaufmann
ITS MANAGER

LLC ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 18 day of Feb, 2005, before me, the undersigned Notary Public, personally appeared Glen Kaufmann and Donna Kaufmann, proved to me through satisfactory evidence of identification, which were known to me, to be the persons whose name is signed on the preceding or attached document, and acknowledged to me that each signed it voluntarily for its stated purpose as a Member of 111-113 School Street, LLC

Glen Kaufmann (official signature and seal of notary)

My commission expires Sept 26, 2008

Acton Community Housing Corporation

Nancy E. Tavernier

ACHC ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 10 day of Feb, 2005, before me, the undersigned Notary Public, personally appeared the foregoing named official of the Acton Community Housing Authority, proved to me through satisfactory evidence of identification, which was: examination of known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Oliver Joyce (official signature and seal of notary)

My commission expires Sept 26, 2008

EXHIBIT A – SEWER USE BYLAW

CHAPTER D

ADMINISTRATIVE PROVISIONS

D10. Sewer Assessment Bylaw

D 10 Sewer System

1. Allocation of Cost of Sewer System. The entire cost of laying out, constructing and operating a system for the collection, treatment and disposal of sewage for all or any part of the Town shall be borne by the land benefited by such system, in accordance with the following provisions, except that costs incurred in connection with the planning and construction of the sewer collection and treatment facility for Middle Fort Pond Brook Sewer District, for archeological studies, paving of roads, engineering peer reviews, police details, traffic studies, and land acquisition, amounting in total to \$1,336,600, shall be allocated to taxpayers at large; and except for such costs as the Town Meeting, by a two-thirds vote, at a town meeting subsequent to this November 15, 1999 Special Town Meeting, shall allocate to taxpayers at large.

2. Assessment by Uniform Unit Method.

a. The Town, acting through its Sewer Commissioners, shall assess the owners of all land abutting any way in which there is a public sewer line constructed by the Town, by the uniform unit method, as authorized by G.L. c. 83 §15.

b. The Sewer Commissioners shall establish sewer assessment units, as follows:

(i) The owner of land used for a single family residence shall be assessed on the basis of one sewer unit. The owner of undeveloped land zoned for single family residential use shall be assessed on the basis of the maximum number of single family residences which may be constructed on such land as of right under the zoning requirements then in effect, without approval of the further subdivision of such land under the Subdivision Control Law.

(ii) The owner of land used for multi-family residential use, shall be assessed on the basis of .67 times the number of dwelling units presently existing on such land, provided each unit has fewer than three bedrooms as defined by Title V. Vacant land zoned for multi-